

BOOK REVIEW

THE PALESTINE YEARBOOK OF INTERNATIONAL LAW

Edited by the Al-Shaybani Society of International Law

Post Office Box 4247, Nicosia, Cyprus (1984)

Pages 267 (Clothbound) \$25.00

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One fear is that this excellent volume may not receive the attention it deserves, for as its title indicates, it is no ordinary academic annual. Its editors have a purpose: to present materials in English which support what can be called a pro-Palestinian position on questions of international law. There is no pretense of objectivity in the ordinary meaning of the word. In his introduction, the editor states: "The Yearbook is committed to objectivity in approach. However, objectivity cannot become an intellectual device for disguising academic bias, nor can it be exploited as a form of spurious detachment. Objectivity does not imply a neutral position between the aggressor and the victim. Rather, legal objectivity requires a consistent commitment to the rule of law"¹

The Palestine Yearbook is edited by the Al-Shaybani Society of International Law. Al-Shaybani was an eighth century Muslim jurist who authored the first treatise on international law from the Muslim perspective. The editorial board consists of a number of prominent Arab jurists and academics, virtually all of whom have impressive academic credentials from American and European universities. The volume is divided into two parts. There are four articles in the first half of the book and a collection of cases and materials in the second.

The first article, entitled "Legal Systems and Developments in Palestine,"² is authored by the Yearbook's editor-in-chief, Anis F. Kassim, a prominent practitioner in Kuwait. This article is a useful overview of the diverse legal systems in force in the area defined by

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¹ THE PALESTINE YEARBOOK OF INTERNATIONAL LAW 15 (A. Kassim ed. 1985) [hereinafter cited as PALESTINE YEARBOOK].

² *Id.* at 19-35.

the League of Nations at the end of the First World War as "Palestine." Ottoman law, a highly developed legal system based on Muslim law with Napoleonic additions, was in force until 1917. During the British occupation and British Mandate, Ottoman law remained in force unless it was in conflict with the common law and equity. Since 1948, the area has been subject to Israeli law, a law which the author believes to be grossly biased in favor of the Jewish population of Israel and the occupied territories as opposed to the Arab population. "Under Israeli rule, Palestinians are relegated to a colonial-style sub-status in comparison to the super-status of the Jewish people."³

The second article, authored by Sally and Thomas Mallison of George Washington University, is entitled "The Juridical Bases for Palestinian Self-Determination."⁴ The authors argue that self-determination is an international legal right with its source in both the United Nations charter and custom. They assert that the Palestine Partition Resolution 1814 provides authority for both the existence of the State of Israel and of an Arab state. "The Palestinian national right of self-determination as recognized in General Assembly resolutions may be exercised in Palestine within the *de jure* boundaries of the State of Israel as ultimately determined."⁵ They note that the Israeli position is that self-determination is not yet an international legal norm, and that to the extent it is, it does not apply to the Arab Palestinians. The positions of Israeli and Arab advocates have changed over the years. At the time of the adoption of the Partition Resolution, Arab states denied its validity; now, Israeli advocates deny it.⁶ The article concludes with the proposal that economic sanctions be applied against Israel to compel it to accept an Arab Palestinian state.

The third article is by David H. Ott of Aberdeen University in Scotland, and is entitled "Autonomy and the Palestinians: A Survey."⁷ This article examines the various proposals for Palestinian autonomy under Jordanian (King Hussein's 1972 proposal) or Israeli (the Reagan Plan and the Camp David Framework) sovereignty both in light of the meaning of the term "autonomy" in international law, and also in light of the constraints the author believes international law imposes on any autonomous relationship the Palestinians

³ *Id.* at 35.

⁴ *Id.* at 36.

⁵ *Id.* at 60.

⁶ *Id.* at 54.

⁷ *Id.* at 68.

may have with an existing state. Professor Ott relies heavily on a 1980 study of autonomy in international law by Professors Lillich and Hannum,⁸ and concludes that none of the proposals for Palestinian autonomy is consistent with the requirements of international law, since they either contemplate an insufficient vesting of authority in the autonomous Palestinians⁹ or ignore the pre-existing legal rights of the Palestinians.¹⁰ If, however, autonomy is to be imposed as a solution which is a "dubious second-best in the most ideal situations,"¹¹ Professor Ott recommends an examination of the proposals put forth by the New Ireland Forum in 1984 for a "not altogether dissimilar situation"¹² in Northern Ireland. He acknowledges, however, that the cultural, political and legal conditions in Ireland can hardly be compared with those in the Middle East.

The final article, "United States Complicity in Israel's Violations of Palestinian Rights,"¹³ is by John Quigley, a Professor of Law at Ohio State University. The author's straightforward assertions are that complicity in the wrongful act of another state is prohibited by international law; that Israel's annexation of part of Jerusalem and its establishment of colonial settlements in the occupied territories, among other things, are plainly prohibited by international law; and that the huge economic and military assistance¹⁴ rendered by the United States to Israel makes it an accomplice to Israel's illegal acts. The remedies due the Palestinians are that the United States cease its aid to Israel and force Israel to quit the West Bank and Gaza.

⁸ Hannum and Lillich, *The Concept of Autonomy in International Law*, 74 AM. J. INT'L L. 858 (1980).

⁹[A] basic feature of the Israeli conception of autonomy . . . is not in keeping with the requirements of international law. Full autonomy and self-government must apply to the administration of a territory and not simply to control over some of the affairs of some of the people living in a particular area.

PALESTINE YEARBOOK, *supra* note 1, at 82.

¹⁰Indeed, many of the examples adduced in the survey seem to suggest that autonomy is often an arrangement designed to reconcile the territorial sovereignty of one party with the separatist aspirations of another party. In a case where the same party was both the legitimate sovereign and wished to establish a distinct international identity, there would appear to be no basis for any autonomy arrangement at all.

Id. at 83.

¹¹ *Id.* at 94.

¹² *Id.*

¹³ *Id.* at 95.

¹⁴ United States aid to Israel constitutes nearly half of that country's national income, and in 1981 was 43% of all United States foreign assistance. *Id.* at 100.

The practical contradiction inherent in those remedies is not mentioned by the author.

The second part of the Palestine Yearbook consists of translations of decisions of Israeli courts, translations of Israeli and Jordanian statutes, and two long reports. The cases are not selected to present the Israeli judicial system in the worst possible light. Indeed, they recognize the restraining influence of international law on the Israeli military; and, to this reviewer, show courts struggling rather gamely with unique legal questions. The cases do show the wide discretion given Israeli military commanders in the West Bank and elsewhere to act pursuant to military orders, many of which are holdovers or copies of British military orders dating from the time of the Palestine Mandate. Actions taken pursuant to these orders, which the editors indicate are often published months after their effective dates and which are not easily obtained, included the destruction of houses and confiscations of land. These actions have been the objects of much publicity and criticism internationally.

The two reports are a study of human rights violations in Lebanon made under the auspices of the American Friends Service Committee and the much publicised Karp Report. The latter is a harrowing account of the activities of Jewish settlers in the West Bank against the Arab population and of inadequate police protection. The Karp Report was made by a team under the direction of the Israeli Ministry of Justice, and concludes that "the key lies not in the technical monitoring of investigations, nor in criteria for investigative techniques, nor in the legal angle, but rather in a radical reform of the basic concept of the rule of law in its broadest and most profound sense."¹⁵

Given its purpose, the editors of the Palestine Yearbook have succeeded admirably. While many will disagree with the conclusions of contributors,¹⁶ few will fail to appreciate the quality of their work. The articles are scholarly, well-written, and taken as a group, present a convincing case for Palestinians with respect to the legal issues discussed. The materials are very interesting, and their presentation in English will be very useful.

¹⁵ *Id.* at 215.

¹⁶ Pro-Israeli commentaries are numerous. Those most frequently cited by the contributors to the Palestine Yearbook are GERSON, *ISRAEL, THE WEST BANK AND INTERNATIONAL LAW* (1978), and J. STONE, *ISRAEL AND PALESTINE: ASSAULT ON THE LAW OF NATIONS* (1981).

It is difficult to be objective (in the dictionary definition of the word) about the question of Palestine. The Palestinians consider themselves to be one of modern history's most mistreated groups, and their writings usually convey a passionate anguish.¹⁷ At a time when Palestinians, and those purportedly acting on their behalf, single out United States hijack victims for murder, an assertion like Professor Quigley's that the United States violations of international law oblige it to "make the Palestinian people as a whole reparation for the harm caused by these violations"¹⁸ will create in most readers in the United States a frame of mind other than the dispassionately analytical. But perhaps lawyerly analysis is exactly what is needed. If one accepts the proposition that a peaceful solution to the Arab-Israeli conflict is possible (a view by no means universally held), well-reasoned arguments like those presented in this book will assist not only the objects of their advocacy, but others interested in a peaceful solution as well.

¹⁷ See, e.g., E. SAID, *THE QUESTION OF PALESTINE* (1979).

¹⁸ *PALESTINE YEARBOOK*, *supra* note 1, at 119.

